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PEGUAM NEGARA MALAYSIA v. MOHD KASSIM ABD HAMID

COURT OF APPEAL, PUTRAJAYA
SURAYA OTHMAN JCA
ABU BAKAR JAIS JCA
HASHIM HAMZAH JCA
B [CRIMINAL APPEAL NO: B-06B-47-12-2020]
6 APRIL 2022

Abstract – *The power to punish for contempt by inferior courts are limited under para. 26 of the Third Schedule of the Subordinate Courts Act 1948; the limitation being only on the prescribed punishment and not on the court's jurisdiction. A Magistrate holding an inquiry of death under the Criminal Procedure Code has the powers and jurisdiction to punish for contempt in the face of the court (facie curiae) and contempt outside of the court (ex facie curiae).*

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CRIMINAL PROCEDURE: *Jurisdiction – Magistrate – Public Prosecutor directed inquest into death – Allegations that Public Prosecutor made premature decision regarding deceased's death and delayed and disrupted continuity and transparency of inquest – Leave for committal proceedings against Public Prosecutor granted by Sessions Court Judge sitting as Magistrate – Whether Magistrate holding inquiry of death under Chapter XXXII of Criminal Procedure Code seized with jurisdiction to punish for contempt of court – Whether exercise of Magistrate's jurisdiction to punish for contempt of court limited to contempt in face of court (facie curiae) – Subordinate Courts Act 1948, ss. 3(2) & 82*

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The appellant, in his capacity as the Public Prosecutor, directed an inquest into the death of Muhammad Adib Mohd Kassim ('deceased'), a firefighter who succumbed to his injuries during a riot. The inquest proceeded before the coroner, with the presence of representatives from the Ministry of Housing and Local Government, the Fire and Rescue Services Department and the deceased's family ('interested parties'). One Syazlin Mansor ('Syazlin') was appointed as counsel to hold watching brief on behalf of the interested parties. A pathologist was scheduled to give his evidence at the inquest but, on the said day, Syazlin withdrew from representing the interested parties and informed the coroner that the pathologist would not continue to give his evidence. The inquest then came to a halt and to clarify matters related to Syazlin's withdrawal, the appellant issued a media release where he said, *inter alia*, '... my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that

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Pn Syazlin Mansor takes an active part in the inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer' ('paragraph in the media release'). The media release prompted the deceased's father ('respondent') to file an *ex parte* application for leave to issue committal proceedings against the appellant, pursuant to O. 52 r. 3 of the Rules of Court 2012 ('ROC'), on the grounds that: (i) the paragraph in the media release, read together with the averment in the DPP's affidavit, meant that the appellant made a premature decision regarding the deceased's death while the inquiry into the death of the deceased was still ongoing; and (ii) the appellant suppressed, delayed and disrupted the transparency of the inquiry which constituted an interference with the course of justice. The Sessions Court Judge ('SCJ'), sitting as a Magistrate, allowed the application. The appellant appealed against the said decision at the High Court. The respondent applied to strike out the appellant's appeal but his application was dismissed. The respondent then appealed against the dismissal of his application ('Appeal No. 96'). Meanwhile, the High Court, after proceeding to hear the appellant's appeal against the decision of the SCJ, allowed the said appeal. Dissatisfied, the respondent appealed to the Court of Appeal ('Appeal No. 13'). The appellant cross-appealed solely on the issue of whether the SCJ, in holding an inquiry of death under Chapter XXXII of the Criminal Procedure Code ('CPC'), was seized with the jurisdiction to punish for contempt ('Appeal No. 47'). Parties had agreed to address Appeal No. 47 first as the appeal would have bearing on Appeal Nos. 96 and 13.

Held (dismissing Appeal No. 47)
Per Hashim Hamzah JCA delivering the judgment of the court:

(1) The term 'court' under ss. 2 and 6 of the CPC should be read together with s. 3(2) of the Subordinate Courts Act 1948 ('SCA'). When these provisions are read together, the term 'court', in the context of the present appeal, simply means a Magistrate's Court established pursuant to the SCA. Under the SCA, a Magistrate Court shall have all the powers and jurisdiction conferred on a First-Class Magistrate, either under the SCA or under any other written law. This would include any powers and jurisdiction conferred to a First-Class Magistrate under the CPC. By virtue of s. 9 of the CPC, the law confers cognisance, power and authority to the Magistrate to hold inquiries of death and to inquire into complaint of offences. The definition of the term 'inquiry', under s. 2 of the CPC, refers to all of the inquiries conducted by a Magistrate pursuant to the provisions under the CPC. (paras 21-26)

(2) Section 82 of the SCA makes no distinction between a Magistrate and a Magistrate's Court, in terms of the exercise of its lawful powers and jurisdiction under the law. In other words, when a Magistrate is exercising its lawful powers and jurisdiction under the law, even for an inquiry of death as conferred on the Magistrate under Part VIII and

Chapter XXXII of the CPC, it is doing so as a court of law. Therefore, since a Magistrate holding an inquiry of death is doing so as a court of law, the Magistrate clearly had jurisdiction to punish for contempt of court. (paras 28 & 31)

(3) Under the CPC, a specific chapter is dedicated for proceedings in certain offences which affect the administration of justice *ie*, Chapter XXXIV. Under s. 353 of the CPC, if any of the offences listed in Chapter XXXIV is committed in the view or in the presence of any Magistrate's Court, whether civil or criminal, the court may take cognisance of the offence and sentence the offender with the prescribed punishment under the same provision. Alternatively, the court may also direct the accused to be prosecuted and dealt with by ordinary process of law as could be seen under s. 355 of the CPC. Other than the CPC, the rules of court pertaining to committal proceedings for contempt of court could be seen in the ROC where, under O. 52, an order for committal for contempt of court could either be initiated by way of an application of any party to any cause or matter or on the Magistrate's Court's own motion. (paras 47-49)

Case(s) referred to:

Balogh v. St Albans Crown Court [1975] QB 73 ***(refd)***
Bok Chek Thou & Anor v. Low Swee Boon & Anor [1998] 5 CLJ 86 HC ***(refd)***
PP v. Seeralan [1985] 1 CLJ 524; [1985] CLJ (Rep) 250 SC ***(refd)***
Re Derek Selby, Deceased [1971] 1 LNS 122 HC ***(refd)***
Re Kumaraendran, An Advocate & Solicitor [1975] 1 LNS 152 HC ***(refd)***
Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim [2008] 5 CLJ 201 FC ***(refd)***
The Queen v. Lefroy (1873) LR 8 QB 134 ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 3(1)
Courts of Judicature Act 1964, ss. 13
Criminal Procedure Code, ss. 2, 6, 9, 339(1), 353, 355, Chapter XXXII, Part VIII
Federal Constitution, art. 126
Penal Code, ss. 175, 178, 179, 180, 228
Rules of Court 2012, O. 52 rr. 2, 2A, 2B, 3, 4
Subordinate Courts Act 1948, ss. 3(2), 6, 82, 99A, Third Schedule para. 26
Subordinate Courts Rules 1950 (repealed), r. 1

County Courts Act 1984 [UK], ss. 113, 114

For the appellant - S Ambiga, Zainur Zakaria, Mankiranjit Kaur Mehinder Singh & Sarah Ho; DPP
For the respondent - Haniff Khatri, Aidil Khalid, Abdul Rahim Sinwan, Abi Mursyidin & Mohd Zubir Embong; M/s Mohd Zubir Embong & Assocs

Reported by Najib Tamby

JUDGMENT

Hashim Hamzah JCA:

Introduction

[1] Sometime in December 2018, Tan Sri Tommy Thomas, the then Attorney General ("AG") in his capacity as the Public Prosecutor ("PP"), had directed for an inquiry of the death of Muhammad Adib bin Mohd Kassim ("the deceased") to be carried out pursuant to s. 339(1) of the Criminal Procedure Code ("CPC").

[2] The deceased was a firefighter who was injured amid a violent riot within the vicinity of Sri Maha Mariamman Temple in Seafield on 27 November 2018. He succumbed to his injury and passed away on 17 December 2018. Pursuant to the said direction, an inquiry was held by the learned Sessions Court Judge ("SCJ") Rofiah binti Mohamad, who was sitting as a Magistrate in holding the said inquiry.

[3] The deceased's family, the Fire and Rescue Department ("FRD") and the Ministry of Housing and Local Government ("the Ministry") were all acknowledged as interested parties and were allowed by the learned SCJ to hold watching briefs in the inquiry. They were represented by Ms Syazlin Mansor.

[4] However, Seafield Mariamman Temple Task Force ("the task force") was denied the right to participate in the inquiry. The Task Force filed an appeal to the Court of Appeal. The Deputy Public Prosecutor ("DPP") in charge of the inquiry affirmed and filed an affidavit on 3 April 2019 ("DPP Hamdan's affidavit") affirming that the deceased's death was not a result of an assault by any person. Consequently, the task force withdrew their appeal and the hearing before the Court of Appeal was struck off.

[5] The inquiry commenced on 11 February 2019. Several witnesses were called to testify. One of the witnesses in the inquiry, Prof Dr Shahrom bin Abdul Wahid, an independent pathologist, was supposed to continue giving his evidence on 27 May 2019. However, on the same day, Ms Syazlin Mansor suddenly withdrew herself from representing the deceased's family, the FRD and the Ministry. She also informed that Prof Dr Shahrom bin Abdul Wahid would not continue to give his evidence. As a result, the inquiry came to a halt and a case management was fixed on 26 June 2019.

[6] On 28 May 2019, a day after Ms Syazlin Mansor's abrupt withdrawal from representing the respective parties, Tan Sri Tommy Thomas issued a media statement in which he stated, among others, that:

> Thirdly; my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that Pn Syazlin Mansor takes an active part in the inquest, **often contradicting the positions our DPPs have taken**, thus causing embarrassment in her capacity as the Ministry's lawyer. (emphasis added)

[7] The media statement by Tan Sri Tommy Thomas had prompted the deceased's father to file an *ex parte* application for leave to issue a committal proceeding under O. 52 r. 3 of the Rules of Court 2012 ("ROC 2012").

[8] In the said application, it was alleged by the deceased's father that the impugned media statement read together with DPP Hamdan's affidavit meant that Tan Sri Tommy Thomas had already made a premature decision regarding the deceased's death while the inquiry into the death of the deceased was still ongoing. It was further alleged that Tan Sri Tommy Thomas had suppressed, delayed and disrupted the transparency of the inquiry which constituted an interference with the course of justice.

[9] The learned SCJ heard the said application by way of an opposed *ex parte*. On 27 August 2019, the application for leave was allowed. On 29 August 2019, the AG filed a notice of appeal to the High Court against the said decision.

[10] Subsequently, the deceased's father applied to the High Court to strike out the AG's appeal. However, this application was dismissed by the learned High Court Judge ("HCJ") on 25 November 2019. The deceased's father filed an appeal to the Court of Appeal against the decision of the learned HCJ. The appeal was registered as Criminal Appeal No. B-06B- 96-12-2019 ("Appeal No. 96").

[11] After dismissing the deceased's father's application to strike out the AG's appeal, the learned HCJ proceeded to hear the AG's appeal against the decision of the learned SCJ. On 28 January 2020, the learned HCJ allowed the AG's appeal. Dissatisfied, the deceased's father filed an appeal to the Court of Appeal. The appeal was registered as Criminal Appeal No. B-06B-13-02-2020 ("Appeal No. 13").

[12] On the other hand, the AG filed a cross-appeal solely on the issue of whether the learned SCJ in holding an inquiry of death under Chapter XXXII of the CPC has the jurisdiction to punish for contempt of court. The cross-appeal was registered as Criminal Appeal No. B-06B-47-12-2020 ("Appeal No. 47").

[13] During submission, both parties have agreed to address the issue raised by the AG by way of a cross-appeal in Appeal No. 47 first as it will have bearing on the other two appeals.

[14] The issue in Appeal No. 47 is whether the learned SCJ sitting as a Magistrate holding an inquiry of death under Chapter XXXII of the CPC has any jurisdiction to punish for contempt of court, and in the event that the learned SCJ has jurisdiction, whether the exercise of the learned SCJ's jurisdiction to punish for contempt of court is limited to contempt in the face of the court (*facie curiae*) which means contempt before or in the presence of the court.

Our Findings

[15] First and foremost, the power of the superior courts, *ie*, the High Court, the Court of Appeal and the Federal Court, to punish for contempt of court is provided under art. 126 of the Federal Constitution ("FC") which reads:

> Article 126. Power to punish for contempt.
>
> The Federal Court, the Court of Appeal or a High Court shall have power to punish any contempt of itself.

[16] Section 13 of the Courts of Judicature Act 1964 ("CJA 1964") uses the exact words as can be seen below:

> Section 13. Contempt.
>
> The Federal Court, the Court of Appeal and the High Court shall have power to punish any contempt of itself.

[17] On the other hand, the power of the subordinate courts *ie*, the Sessions Court and the Magistrate's Court to punish for contempt of court is derived from s. 99A and para. 26 of the Third Schedule to the Subordinate Courts Act 1948 ("SCA 1948") which state:

> Section 99A. Further powers and jurisdiction of courts.
>
> In amplification and not in derogation of the powers conferred by this Apt or inherent in any court, and without prejudice to the generality of any such powers, **every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule**.
>
> 26. Contempt of court.
>
> **Power to take cognizance of any contempt of court** and to award punishment for the same, not exceeding, in the case of a Sessions Court, a fine of three hundred ringgit or imprisonment for
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> six weeks, in the case of a Magistrates' Court presided over by a First-Class Magistrate, a fine of one hundred and fifty ringgit or imprisonment for three weeks, and in the case of a Magistrates' Court presided over by a Second Class Magistrate, a fine of fifty ringgit or imprisonment for one week, **to such extent and in such manner as may he prescribed by rules of court**. If the contempt of court is punishable as an offence under the Penal Code, the court may, in lieu of taking cognizance thereof, authorise a prosecution.
>
> (emphasis added)

[18] Learned counsel for the AG, Dato' Ambiga Sreenevasan, submitted that a Magistrate holding an inquiry of death is not a "court" *per se*, hence there can be no jurisdiction to punish for contempt of court. According to the learned counsel for the AG, the terms "court" and "inquiry" are distinctively defined under ss. 2 and 6 of the CPC.

[19] However, we do not agree with learned counsel for the AG. Section 2 of the CPC defines the term "court" and "inquiry" as follows:

> Section 2. Interpretation
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> (1) In this Code:
>
> **"Court" means** the High Court, a Sessions Court, or a **Magistrate's Court of any class, as the context may require**;
>
> ...
>
> **"inquiry"** includes **every inquiry conducted under this Code before a Magistrate;"**
>
> (emphasis added)

[20] Section 6 of the CPC further states:

> Section 6. Courts.
>
> **The Courts for the administration of criminal justice in Malaysia shall be those constituted pursuant** to the Constitution, or the Courts of Judicature Act 1964 [Act 91], or **by the Subordinate Courts Act 1948** [Act 92], or by any other law for the time being in force.
>
> (emphasis added)

[21] We are of the view that for the purpose of the present appeal, the term "court" under ss. 2 and 6 of the CPC should be read together with s. 3(2) of the SCA 1948 which states that:

> (2) There shall be **established the following Subordinate Courts for the administration of** civil and **criminal law in Peninsular Malaysia**:
>
> (a) **Sessions Courts**;
>
> (b) **Magistrates' Courts**.
>
> (emphasis added)

[22] When these provisions are read together, the term "court" in the context of the present appeal simply means a Magistrate's Court established pursuant to the SCA 1948.

[23] The general powers and jurisdiction of a Magistrate Court established pursuant to the SCA 1948 are provided under s. 82 of the SCA 1948 which reads:

> Section 82. General powers and jurisdiction of Magistrates' Courts and Magistrates.
>
> *A Magistrates' Court constituted under this Act shall, for all purposes, be deemed to be the Court of a First-Class Magistrate, and shall have all the powers and jurisdiction conferred on a First Class Magistrate by this Act or any other written law*, and any Magistrate of either class within the local limits of whose jurisdiction the Court is situate may exercise the powers and jurisdiction of the Court:

Provided that a Second-Class Magistrate shall not hold any preliminary inquiry or proceed to the final trial and determination of any cause or matter which is not within the jurisdiction conferred upon him by s. 88 or 92 or by any other written law.

(emphasis added)

[24] In short, a Magistrate Court established under the SCA 1948 shall have all the powers and jurisdiction conferred on a First-Class Magistrate, either under the SCA 1948 or under any other written law. In our view, this would include any powers and jurisdiction conferred to a First-Class Magistrate under the CPC.

[25] By virtue of s. 9 of the CPC, the law confers cognisance, power and authority to the Magistrate to hold inquiries of death and to inquire into complaint of offences. For ease of reference, s. 9 of the CPC provides that:

Section 9. Criminal jurisdiction of Magistrates.

Subject to the provisions of this Code **every Magistrate shall have cognizance of and power and authority to**:

(a) hear, try, determine and dispose of in a summary way prosecutions for offences committed wholly or in part within the local jurisdiction of such Magistrate and cognisable by such Magistrate;

(b) (Repealed by Act A908);

(c) (Repealed by Act A908);

(d) **inquire into complaints of offences** and summon and examine witnesses touching such offences and summon and apprehend and issue warrants for the apprehension of criminals and offenders, and deal with them according to law;

(e) issue warrants to search or to cause to be searched places wherein any stolen goods or any goods, articles or things with which or in respect of which any offence has been committed are alleged to be kept or concealed, and require persons to furnish security for the peace or for their good behaviour according to law;

(f) **hold inquiries of death**; and

(g) do all other matters and things which a Magistrate is empowered to do by any written law.

(emphasis added)

[26] The definition of the term "inquiry" under s. 2 of the CPC therefore, refers to all of these inquiries conducted by a Magistrate pursuant to the provisions under the CPC.

[27] To summarise, for the purpose of the present appeal, a "court" simply means a Magistrate's Court established under the SCA 1948 whereas an "inquiry" is one of the powers and jurisdiction exercisable by the said Magistrate or Magistrate's Court under the CPC.

[28] In addition, s. 82 of the SCA 1948 above makes no distinction between a Magistrate and a Magistrate's Court in terms of the exercise of its lawful powers and jurisdiction under the law. In other words, when a Magistrate is exercising its lawful powers and jurisdiction under the law, even for an inquiry of death as conferred on the Magistrate under Part VIII and Chapter XXXII of the CPC, it is doing so as a court of law.

[29] We agree and adopt the relevant part of Sharma J's judgment in *Re Derek Selby, Deceased* [1971] 1 LNS 122; [1971] 2 MLJ 277 which was also referred by the learned HCJ in his grounds of judgment extracted below:

> Dr Mallal in his *Criminal Procedure*, 4th Edn, at p. 485 says:
>
> > **A coroner's inquest is a Court of law although no person is accused before him**. The coroner examines witnesses on oath and white usually following the ordinary rules of evidence he may admit any evidence which he thinks fit, especially hearsay evidence. His duty is to ascertain the cause of death and he is not bound to follow the usual procedure of law Courts. He may exclude the public from Court if he considers it desirable in the interests of justice or decency ...
>
> The following passages appear in *Halsbury's Laws of England*, 3rd edn, vol. 9, p. 342:
>
> > Originally the term 'Court' meant among other meanings the Sovereign's palace; ... a tribunal may be a Court in the strict sense of the term although the chief part of its duties is judicial. Parliament is a Court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its functions. **A coroner's Court is a true Court although its essential function is investigation**.
>
> The question is whether the tribunal is a Court, not whether its a Court of justice, for there are Courts which are not Courts of justice ...
>
> Again on p. 461 of vol. 9 of *Halsbury's Laws of England* it is said:
>
> > **The coroner's Court is a common law Court of record and a Court of special criminal jurisdiction. The function of the Court is to inquire into the cause of death** ... The coroner's inquisition may be quashed by the High Court.
>
> (emphasis added)

[30] Even the Supreme Court in the case of *PP v. Seeralan* [1985] 1 CLJ 524; [1985] CLJ (Rep) 250; [1985] 2 MLJ 30 recognises the Magistrate's power to punish for contempt of court in an inquiry of death. The following can be observed:

> "There is one other matter which needs to be mentioned here. *The Magistrate's power under para. 26 of the Third Schedule of the Subordinate Courts Act to take cognizance of any contempt of Court and to award punishment for the same is exercisable to such extent and in such manner as may be prescribed by Rules of Court"*. Order XXXVIII r. 1 of the Subordinate Courts Rules 1950 made

> provisions for the exercise of this power and Abdoolcader J (as he then was) held in *Re Kumaraendran* (*supra*) that the rule applied to a contempt of Court committed in the face of Court in respect of proceedings of a civil nature as well as or at best by analogy to those of a criminal nature because the rule is "a statutory crystallisation of an established principle of law". However; when the Subordinate Courts Rules 1980 came into effect replacing the 1950 Rules, the provisions of Order XXXVI11 r. 1 of the 1950 Rules were not retained. There is, therefore, no provision in the present Subordinate Courts Rules regarding the exercise of this power by the Magistrate either in respect of civil proceedings or criminal proceedings. In our view the absence of such provision in the rules of Court does not mean that the power cannot be exercised. The Magistrate can effectively exercise the power so long as the contemnor is given an opportunity of being heard.
>
> (emphasis added)

[31] Since a Magistrate holding an inquiry of death is doing so as a court of law, the Magistrate clearly has jurisdiction to punish for contempt of court. As such, we answer the first question in the affirmative.

[32] Further, learned counsel for the AG submitted that even if the Magistrate holding an inquiry of death has the power and jurisdiction to punish for contempt of court, the exercise of such a power is limited only to contempt in the face of the court (*facie curiae*). The argument of learned counsel for the AG on this issue is two-fold.

[33] Firstly, learned counsel for the AG submitted that the Magistrate's Court, as an inferior court, has no jurisdiction to punish for contempt outside of the court.

[34] Reference was made to the case *The Queen v. Lefroy* (1873) LR 8 QB 134. In this case, the Queen's Bench Division of the UK High Court held that the county courts in the UK, which have been made a court of record pursuant to the County Courts Act 1846 (9 & 10 Viet c 95) shall have the power to punish for any contempt committed in the face of the court necessary for due administration of justice under ss. 113 and 114 of the said Act. However, it was further held that as inferior courts of record, the county courts' power under the said Act does not extend to contempt committed out of court, as there are other remedies for such proceeding.

[35] However, we found that the principle in *Lefroy*'s case was derived from an interpretation of a specific statute in the UK namely the County Courts Act 1846 (9 & 10 Viet c 95) (now the County Courts Act 1984 (c 28) as can be seen below:

> When, therefore, *the statute makes the county courts of record, and protection is afforded by the statute against contempt committed in court, and the limit of the jurisdiction is denned by s. 113, the intention is clearly shewn of confining the*

> *jurisdiction to contempt in the face of the Court, leaving what may be called contempt out of court to be punished by the general law, by indictment or otherwise*. And that this is the intention is further fortified by s. 114, which gives a summary remedy against certain acts which would be contempts of court, and confines this remedy to the protection of the officers. It clearly would have been unnecessary to give this summary power to the court of inflicting, a fine for interference with the process of the court had it been intended or supposed that the county court, as an inferior court of record, had the general authority which the superior courts have.
>
> (emphasis added)

[36] It is pertinent to note at this juncture that we do not have any similar legislation with the UK's County Courts Act locally. Instead, we have our own constitutional and statutory provisions regarding the power of our courts to punish for contempt of court. The power to punish for contempt of court by the superior courts are stipulated in art. 126 of the FC and s. 13 of the CJA 1964. For the subordinate courts, the power to punish for contempt are provided in s. 99A and para. 26 of the Third Schedule to the SCA 1948.

[37] Therefore, we are of the view that the principles enunciated in *Lefroy*'s case is not applicable in Malaysia by virtue of s. 3(1) of the Civil Law Act 1956 ("CLA 1956"). For the sake of completeness, s. 3(1) of the CLA 1956 reads:

> Section 3, Application of U.K. common law, rules of equity and certain statutes.
>
> (1) **Save so far as other provision has been made or may hereafter be made by any written Saw in force in Malaysia**, the Court shall:
>
> (a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;
>
> (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;
>
> (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii):
>
> Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.
>
> (emphasis added)

[38] In the Federal Court case of *Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201; [2008] 3 MLJ 753, Abdul Hamid Mohamad CJ in delivering the judgment of the court clearly held:

> [17] Those are matters covered by the Act, and they are matters of civil law. *Common law of England and the rules of equity made applicable by the Act are those concerning civil law not provided by the Act or any other written law. Once it is provided by our written law, the English common law and the rules of equity are excluded*. To read that the English common taw exists side by side with a law provided by statute, whether originated from the principles of the English common law or not, is to blatantly disregard the very clear opening words of s. 3(1) of the CLA 1956. That cannot be right.
>
> (emphasis added)

[39] Next, in our instant appeal, s. 99A and para. 26 of the Third Schedule to the SCA 1948 are applicable. Specifically, para. 26 of the Third Schedule to the SCA 1948 states:

> 26. Contempt of court
>
> **Power to take cognisance of any contempt of court and to award punishment for the same**, not exceeding, in the case of a Sessions Court, a fine of three hundred ringgit or imprisonment for six weeks, in the case of a Magistrates' Court presided over by a First Class Magistrate, a fine of one hundred and fifty ringgit or imprisonment for three weeks, and in the case of a Magistrates' Court presided over by a Second Class Magistrate, a fine of fifty ringgit or imprisonment for one week, to such extent and in such manner as may be prescribed by rules of court. If the contempt of court is punishable as an offence under the Penal Code, the court may, *in lieu* of taking cognizance thereof, authorize a prosecution.
>
> (emphasis added)

[40] The learned counsel for the AG further submitted that the Magistrate's power and jurisdiction to punish for contempt of court is limited only to contempt in the face of the court (*facie curiae*) due to the use of the word "cognisance" in para. 26 of the Third Schedule to the SCA 1948.

[41] We found no merit in this submission. We are of the view that by definition, the term "cognisance" merely means, among others, jurisdiction or judicial notice or knowledge as can be seen in *Black's Law Dictionary* below:

> COGNIZANCE. Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter; or power and authority to make it. *Clarion County v. Hospital*, 111 Pa. 339, 3 A. 97.*
>
> **Judicial notice or knowledge**; the judicial hearing of a cause; **acknowledgment**; confession; **recognition** ...
>
> (emphasis added)

[42] We are also of the view that the authorities relied upon by learned counsel for the AG do not support their case. The cases cited, that are *Balogh v. St Albans Crown Court* [1975] QB 73, *Re Kumaraendran, An Advocate & Solicitor* [1975] 1 LNS 152; [1975] 2 MLJ 45 and *Bok Chek Thou & Anor v. Low Swee Boon & Anor* [1998] 5 CLJ 86; [1998] 4 MLJ 342, do not in our minds state or imply that the words "cognisance of any contempt" of court is exclusively applicable only to contempt in the face of the court (*facie curiae*).

[43] On the contrary, we are of the considered view that the term "cognisance of any contempt of court" as stated in para. 26 of the Third Schedule to the SCA 1948 would include both contempt in the face of the court (*facie curiae*) and contempt outside of the court (*ex facie curiae*).

[44] We therefore agreed and adopted the similar position taken by Suriyadi J (as His Lordship then was), in *Bok Chek Thou* (*supra*), which was also referred to by learned counsel for the AG, as follows:

> Adverting to, and disseminating this relevant para 26, the subordinate courts may act on any contempt of court, **inclusive of any form of contempt in the face of the court (or contempt *ex facie* the court)**.
>
> (emphasis added)

[45] Our view is further fortified by the fact that under para. 26 of the Third Schedule to the SCA 1948, the words "to such extent and in such manner as may be prescribed by rules of court" were also used.

[46] Abdoolcader J (as His Lordship then was) in *Re Kumaraendran* (*supra*) in interpreting para. 26 of the Third Schedule to the SCA 1948 also referred to the repealed r. 1 of the Subordinate Courts Rules 1950 which contained provisions on both contempt in the face of the court and other cases of contempt of court. The following is observed:

> As l have already stated, the power given to the Sessions and Magistrate's Courts to take cognizance of any contempt of court and to award punishment therefor in paragraph 26 of the Third Schedule to the 1948 Act **is to be exercised to such extent and in such manner as may be prescribed by rules of court**. There are indeed rules of court in this context in Order XXXVIII of the Subordinate Courts Rules, 1950, rule 1 of which statutorily embodies and enacts the principle of showing cause I have referred to and reads as follows:
>
> > 1.(1) If a contempt is committed in face of the court, it shall not be necessary to serve notice to show cause, but the court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and shall make a proper record of the proceedings.

(2) In all other cases of contempt of court, notice to show cause why he should not be committed to the civil prison or fined shall be served personally.

(emphasis added)

[47] Under the CPC, a specific chapter is dedicated for proceedings in certain offences which affect the administration of justice, *ie*, Chapter XXXIV. These offences are:

(i) omission to produce a document to a public servant by a person legally bound to produce such document (s. 175 of the Penal Code);

(ii) refusing oath when duly required to take oath by a public servant (s. 178 of the Penal Code);

(iii) refusing to answer a public servant authorised to question (s. 179 of the Penal Code);

(iv) refusing to sign statement (s. 180 of the Penal Code); and

(v) intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (s. 228 of the Penal Code).

[48] Under s. 353 of the CPC, if any of the above offences is committed in the view or in the presence of any Magistrate's Court whether civil or criminal, the court may take cognisance of the offence and sentence the offender with the prescribed punishment under the same provision. Alternatively, the court may also direct the accused to be prosecuted and dealt with by ordinary process of law as can be seen under s. 355 of the CPC.

[49] Other than the CPC, the rules of court pertaining to committal proceeding for contempt of court can also be seen in the Rules of Court 2012 ("ROC 2012"). Specifically, under O. 52 of ROC 2012, an order for committal for contempt of court can either be initiated by way of an application of any party to any cause or matter or on the Magistrate's Court's own motion. This can be seen under O. 52 r. 2 of ROC 2012 which reads:

Committal for contempt of Court (O. 52 r. 2)

2. The Court may, **on the application of any party** to any cause or matter **or on its own motion, make an order of committal** in Form 107.

(emphasis added)

[50] A separate procedure was also set up under ROC 2012 for contempt in the face of the court (under O. 52 r. 2A of ROC 2012) and other cases of contempt of court *ie*, upon application (under O. 52 r. 2B, 3 and 4 of ROC 2012).

[51] To conclude, we hold that for the purpose of due administration of justice in Malaysia, the law confers jurisdiction to the subordinate courts to take cognisance of any contempt of court committed either contempt in the face of the court (*facie curiae*) or contempt outside of the court (*ex facie curiae*). The exercise of the court's jurisdiction is subject to the relevant laws and rules of court. We agree that the power to punish for contempt by inferior courts are limited under para. 26 of the Third Schedule of the SCA 1948 compared to that of the superior courts.

However, in our considered view the limitation is only on the prescribed punishment and not on the court's jurisdiction.

Conclusion

[52] Taken in totality all the above, we hold that a Magistrate holding an inquiry of death under the CPC has the powers and jurisdiction to punish for contempt in the face of the court (*facie curiae*) and contempt outside of the court (*ex facie curiae*).

[53] Based on the foregoing reasons, we found that there are no merits in the AG's cross-appeal in Appeal No. 47 and hereby dismiss the cross-appeal.